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IN THE  
(1950)  
**SUPREME COURT OF THE UNITED STATES**

NUMBER ~~100~~ 66

ALFRED F. DOWD, as Warden  
of the Indiana State Prison,

*Petitioner,*

v.

UNITED STATES OF AMERICA, ex rel.  
Lawrence E. Cook,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI AND  
BRIEF IN SUPPORT THEREOF**

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*To the Honorable Chief Justice and the Associate Justices  
of the Supreme Court of the United States:*

Petitioner respectfully requests that a Writ of Certiorari be issued to review a judgment of the U. S. Court of Appeals for the Seventh Circuit affirming the judgment of the U. S. District Court for the Northern District of Indiana, wherein the Respondent, Lawrence E. Cook was discharged from imprisonment in the Indiana State Prison on a Petition for Habeas Corpus.

## **SUMMARY STATEMENT OF MATTERS INVOLVED**

Respondent was adjudged guilty of Murder on the 23rd day of July, 1931, by the Jennings Circuit Court, Jennings County, Indiana, and sentenced to the Indiana State Prison for life. (Record Page 4).

On October 22, 1948, he filed an amended petition for writ of habeas corpus in the United States District Court for the Northern District of Indiana, in which he alleged, in substance, that Warden Daly and other Officers of the Indiana State Prison prevented him from sending appeal documents out of said Prison within the six months period allowed by law to appeal, and that because of said acts, he (the respondent) was deprived of an opportunity to appeal his conviction to the Supreme Court of Indiana, and that said acts constituted a violation of equal protection of the law as guaranteed by the Constitution. (Record Pages 20 to 27, inclusive).

To respondent's petition, petitioner filed a Motion to Dismiss in which it was asserted that the petition shows on its face various matters which precluded the Respondent from a right to relief by Habeas Corpus. Also in said Motion to Dismiss, the petitioner contended that all questions of fact concerning whether or not the Prison Warden and other Officials deprived the Respondent of his right to send out appeal papers, were decided adversely to the Respondent by the Supreme Court of the State of Indiana, and that the whole matter is res judicata. (Record Page 28).<sup>6</sup>

The District Court overruled the Motion to Dismiss, and after a hearing, came to the conclusion that the Re-

spondent's allegations were true, and that he had been prevented from sending out appeal papers. The court believed, that because of said facts, the Respondent's further incarceration is contrary to the equal protection clause of the Constitution. For this reason, and on the authority of *Cockran v. Kansas*, 316 U. S. 244, the District Court ordered that Cook be discharged. (Record Page 178 to 182 inclusive.)

Petitioner appealed to the United States Court of Appeals for the Seventh Circuit; after oral argument, that court (by a two to one decision) affirmed the judgment of the District Court and rendered its opinion on February 7, 1950. Judge Kerner dissented. (Record Page 203 to 210 inclusive.)

Of the judgment rendered by the Circuit Court of Appeals, the petitioner Alfred F. Dowd, requests a review by this Honorable Court on a writ of certiorari.

### **JURISDICTION**

The jurisdiction of this Court is invoked, under the authority of Title 28 U. S. Code, Section 1254(1), to review by certiorari the judgment of the United States Court of Appeals for the Seventh Circuit, and petitioner herein alleges that this Court has jurisdiction of this matter under and by virtue of said statute.

### **QUESTIONS PRESENTED**

1. When a petition for late appeal (based on questions of fact as to whether or not a prisoner was prevented from



taking an appeal) is presented to a State Supreme Court, and said Court denies said petition but is silent as to how it decides the questions of fact, can it not be presumed that the questions of fact were thus decided against the petitioner and have thereby become *res judicata* so that a Federal District Court should not thereafter hear evidence and again determine these same questions of fact in habeas corpus proceedings?

2. Is a man who is incarcerated under an unquestioned, valid judgment of the State Court entitled to the extraordinary remedy of complete freedom in habeas corpus proceedings in a Federal Court, because of matters occurring subsequent to said judgment?

3. Has a prisoner, who was temporarily prevented from taking appeal, been denied equal protection of the law? In other words, may a convicted prisoner, whose conviction and incarceration is based on an unquestioned, valid judgment, obtain his freedom by habeas corpus, for the reason, that Prison Officials temporarily denied him the right to appeal, or can said right be considered in a state of suspension during the period of disability and then restored when said disability is removed? Can the State remove the disability, and thereby restore the right to an appeal, and thus provide the prisoner with equal protection of the law?

4. If the right to an appeal can be considered in a state of suspension during the period of disability, thus preventing the running of the time limitation thereon, does not the time limitation thereon begin to run at the time that the restraint is removed and when the petitioner obtains knowledge of the removal of such restraint?

## **REASONS RELIED ON FOR ALLOWANCE OF WRIT**

1. The first question presented here was decided in the negative by the decision of the Federal District Court and by the Circuit Court of Appeals. We believe that the Federal District Court in hearing evidence on, and determining, the same questions of fact as were presented to the Indiana Supreme Court exercised an appellate function, and reviewed the decision of the Indiana Supreme Court. The Circuit Court of Appeals in affirming the Federal District Court's judgment under these circumstances has sanctioned such a departure from the excepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

2. The second question presented herein was answered in the affirmative by the decision of the Federal District Court and the Circuit Court of Appeals. Judge Kerner disagreed and based his dissent on this question. We believe that this is a question of general importance which has not been, but should be, settled by the Court.

3. The third question presented herein was answered in the affirmative by the decision of the Federal District Court and the Circuit Court of Appeals and said decision further decided that where an appeal is temporarily denied, the right to same has not been suspended; the effect is permanent, and the State is forever precluded from restoring said right. We believe that this decision constitutes a misapplication of the equal protection clause of the Constitution. Whether or not the circumstances presented in this question constitute a violation of the equal protection clause of the Constitution has not been, but should be, settled by this Court.

4. The fourth question presented here was decided in the negative by the decision of the Federal District Court and by the Circuit Court of Appeals. This decision means that under the circumstances of this case the time for taking an appeal is unlimited. Instead of receiving equal protection of the law, a prisoner in these circumstances would receive particular favor and consideration. He could wait until witnesses have died and evidence has been destroyed and then take his appeal; whereas other prisoners must take their appeal within a certain time or they are thereafter barred from so doing. We believe that the Circuit Court of Appeals in affirming the decision of the Federal District Court on this question has sanctioned such a departure from the excepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

WHEREFORE, your petitioner respectfully requests that a Writ of Certiorari be issued out of, and under the seal of, this Honorable Court, directed to the Circuit Court of Appeals of the Seventh District, and that the decision of said court be reversed.